

1 THE HONORABLE JOHN C. COUGHENOUR
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MARY TAIE, *et al.*,

11 Plaintiffs,

CASE NO. C21-0526-JCC

12 v.
13
14 ORDER

TEN BRIDGES LLC, *et al.*,

Defendants.

15 Before the Court is Defendants' motion to dismiss Plaintiffs' Second Amended
16 Complaint ("SAC"). (Dkt. No. 40.) Having thoroughly considered the parties' briefing and the
17 relevant record, the Court determines that oral argument is unnecessary and hereby DENIES
18 Defendants' motion for the reasons explained below.

19 **I. BACKGROUND**

20 The Court's order on Defendants' first motion to dismiss describes in detail the substance
21 of Plaintiffs' allegations, which the Court will not repeat here. (*See* Dkt. No. 25 at 1–2.) The
22 Court allowed much of Plaintiffs' lawsuit to go forward but dismissed without prejudice the
23 claims against Demian Heald and his marital community. (*Id.* at 8–9.) Plaintiffs filed an
24 amended complaint (Dkt. No. 27), and when Defendants moved to dismiss it (Dkt. No. 28),
25 Plaintiffs sought leave to file a second amended complaint ("SAC") asserting claims under
26 Washington's Uniform Voidable Transfer Act ("UVTA") and seeking to disregard the corporate

1 separation between Ten Bridges and Heald, (Dkt. No. 30). The Court granted leave to assert the
 2 new claims but *sua sponte* dismissed with prejudice Plaintiffs' claims against Heald's marital
 3 community. (Dkt. No. 37.)

4 Defendants then filed the pending motion, this time targeting Plaintiffs' attempt to
 5 impose personal liability on Heald for alleged violation of Washington's Consumer Protection
 6 Act ("WCPA").

7 II. DISCUSSION

8 "To survive a motion to dismiss, a complaint must contain sufficient factual matter,
 9 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556
 10 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court
 11 draws reasonable inferences for the nonmoving party; but offering "'labels and conclusions' or
 12 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*,
 13 550 U.S. at 555).

14 When they first attempted to assert CPA liability against Heald, Plaintiffs alleged that he
 15 "personally directed, participated, and approved Ten Bridges' conduct" when it communicated
 16 with Plaintiffs to secure an assignment of their rights to the surplus funds (Dkt. No. 1-2 at 9), and
 17 judicially noticeable records showed that Heald had personally verified a motion asking the state
 18 court to disburse surplus foreclosure proceeds. (Dkt. No. 15-1 at 63–64).

19 The Court held that this was not enough. (Dkt. No. 25 at 8–9.) While corporate officers
 20 can be liable under the CPA for their own role in committing a violation, that does not make
 21 automatically make them liable for their companies' violations. (*Id.* citing *Grayson v. Nordic
 22 Constr. Co.*, 599 P.2d 1271 (1979); *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 553
 23 P.2d 423 (1976); *Johnson v. Harrigan-Peach Land Dev. Co.*, 489 P.2d 923 (1971).) Rather, they
 24 are liable for their *own* involvement even in wrongful acts done *on behalf* of the company.
 25 *Dodson v. Econ. Equip. Co.*, 62 P.2d 708, 709 (Wash. 1936) ("Where the officer performs . . .
 26 acts which would amount to conversion if he acted for himself alone, he is personally liable even

1 though the acts were performed for the benefit of his principal . . . ”). This is so if the officer
 2 “either knowingly committed wrongful acts or directed others to do so knowing the wrongful
 3 nature of the requested acts.” *Annechino v. Worthy*, 290 P.3d 126, 130 (Wash. Ct. App. 2012)
 4 (citing the *Grayson*, *Ralph Williams*’, *Johnson*, and *Dodson* cases cited above).

5 Plaintiffs make numerous allegations about Heald’s purported role in Ten Bridges’ alleged
 6 CPA violations, but the gist is that Heald is Ten Bridges’ sole owner, he allegedly controls and
 7 oversees its operations to a high degree, and, according to Plaintiffs, nothing that happened
 8 between Ten Bridges and Plaintiffs would have occurred at all, or in the way that it did, without
 9 Heald’s knowledge, direction, and approval. (Dkt. No. 42 at 5–6, 12–13.) Plaintiffs also allege
 10 that, shortly after unfavorable state court rulings, Heald and Ten Bridges entered insider
 11 transactions in an effort to protect Heald’s financial interest in Ten Bridges at the expense of
 12 potential creditors. (*Id.* at 9; *see also* Dkt. No. 37 at 3–4 (discussing Plaintiffs’ UVTA claims).)
 13 Plaintiffs do not allege that they personally communicated with Heald or that he specifically
 14 instructed anyone at Ten Bridges to mislead them about how hard it would be to recover the
 15 foreclosure proceeds on their own. The issue is whether Heald’s alleged conduct rises to the level
 16 present in other cases where courts imposed personal liability for CPA violations.

17 Ralph Williams, the individual defendant in *State v. Ralph Williams’ N.W. Chrysler*
 18 *Plymouth, Inc.*, 553 P.2d 423, 430–33 (1976) exercised total control over group of car
 19 dealerships whose sales, advertising, and negotiation tactics were pervasively deceptive and
 20 predatory; he also personally designed advertisements and was the only signer on company bank
 21 accounts from which he personally borrowed money. The court in *Grayson* affirmed personal
 22 liability against an individual defendant who directed the mailing of a deceptive advertising
 23 brochure, 599 P.2d at 554–55. And in *Johnson*, the court upheld personal liability against a
 24 company’s president who managed a construction project it had promised so as to induce people
 25 to buy homes in its development. 489 P.2d at 751–52. In doing so, the court emphasized that the
 26 executive did not provide money for the project and failed to retract the company’s promises

1 once he knew it could not follow through. *Id.*

2 Whether Heald's alleged conduct rises to this level is a close call: The governing legal
 3 standard—whether an officer's involvement in unlawful conduct was sufficiently personal and
 4 knowing, itself “a question of degree,” *Parkinson v. Freedom Fidelity Mgmt., Inc.*, 2012 WL
 5 1931233, slip op. at 12 (E.D. Wash. 2012)¹—is not especially helpful at the pleadings stage. The
 6 courts in *Ralph Williams*’, *Grayson*, *Johnson*, and *Dodson*, in contrast, each had the benefit of a
 7 complete record following a judgment on the merits. Here, in contrast, Plaintiffs presumably lack
 8 complete information about Heald’s role in Ten Bridges’ alleged CPA violations.

9 At the same time, while Plaintiff’s allegations are more than conclusory, they are only
 10 just. It is not clear how they purport to know what they allege, putting the allegations somewhere
 11 between “information and belief” and factual allegations that appear from a read to have some
 12 evidentiary support. Still, all Plaintiffs must do at this stage is set forth a plausible, non-
 13 conclusory theory of liability that gives Defendants adequate notice and complies with Federal
 14 Rule of Civil Procedure 11. On balance, they have done so, especially viewing their allegations
 15 about Heald’s management alongside their more detailed assertions regarding the UVTA claims.

16 Accordingly, the Court DENIES Defendants’ motion to dismiss the CPA claims against
 17 Heald, but it does so without prejudice to renewal in a motion for summary judgment.

18 III. CONCLUSION

19 For the foregoing reasons, Defendants’ Motion to Dismiss (Dkt. No. 40) is DENIED. It is
 20 further ORDERED as follows:

21 1. The parties shall hold their Rule 26(f) conference by April 15, 2022.

22

23 ¹ *Parkinson* also observed that “Washington case law appears to draw a distinction between
 24 ‘unfair’ and ‘deceptive’ practices [under] the CPA for purposes of imposing personal liability on
 25 a corporate officer.” *Id.* But although the lead cases on this issue—*Ralph Williams*’, *Grayson*,
 26 *Johnson*, and *Dodson*—indeed involved deceptive conduct, none of them expressly recognizes
 any such distinction, and this Court has held that deceptiveness is not required for personal
 officer liability on a *per se* CPA claim predicated on a separate statutory violation. *Rinky Dink,
 Inc. v. Elec. Merchant Sys., Inc.*, 2014 WL 12103245, slip op. at 5 (W.D. Wash. 2014).

1 2. Initial disclosures are due April 22, 2022.
2 3. The parties shall submit a joint status report by April 29, 2022.

3 DATED this 22nd day of March 2022.

4
5
6
7 John C. Coughenour
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



John C. Coughenour
UNITED STATES DISTRICT JUDGE